

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

THEODORE CONNOLLY
Claimant

VS.

MINSKY'S CITY MARKET
Respondent

AND

CALIFORNIA INDEMNITY INSURANCE COMPANY
Insurance Carrier

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Docket No. 1,002,583

ORDER

Respondent and its insurance carrier appealed the March 29, 2002 preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample.

ISSUES

Claimant was brutally attacked the night of January 21, 2002, outside the restaurant that he managed. In the March 29, 2002 preliminary hearing Order, Judge Sample determined claimant's injuries arose out of and in the course of employment as claimant was attacked while inspecting respondent's premises. Accordingly, the Judge granted claimant both temporary total disability benefits and medical benefits.

Respondent and its insurance carrier contend the Judge erred. They argue the attack occurred after claimant had left work and, thus, the attack did not arise out of and in the course of claimant's employment. Accordingly, respondent and its insurance carrier request the Board to reverse and vacate the March 29, 2002 Order.

Conversely, claimant contends the Order should be affirmed.

The only issue before the Board on this appeal is whether claimant's injuries arose out of and in the course of employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order should be affirmed. The Board adopts the findings and conclusions set forth by the Judge in the Order.

The Board agrees that claimant was attacked while he was inspecting the outside of the restaurant. As the restaurant's general manager, claimant's duties included inspecting the sidewalks around the restaurant to insure they were clear of trash and debris, inspecting the outside signs, and checking the outdoor beer and food coolers to insure they were secure. Those duties placed claimant in a situation where he was at greater risk of robbery and assault than the general public.¹

In short, the attack on claimant occurred in the course of employment as it occurred while claimant was working on behalf of respondent. The attack arose out of the employment as claimant's job duties exposed him to greater risk of attack than that of the general public.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.²

WHEREFORE, the Board affirms the March 29, 2002 preliminary hearing Order entered by Judge Sample.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

c: Steven R. Jarrett, Attorney for Claimant
Donald J. Fritschie, Attorney for Respondent and its Insurance Carrier
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

¹ See *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979), and *Orr v. Holiday Inns, Inc.*, 6 Kan. App. 2d 335, 627 P.2d 1193, *affirmed* 230 Kan. 271, 634 P.2d 1067 (1981).

² K.S.A. 44-534a.